Quarterly Report
of the
ATTORNEY GENERAL
of
ALABAMA

For The Period
From July 1, 1955
Through September 30, 1955
VOLUME 80

JOHN PATTERSON, Attorney General

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QUARTERLY REPORT

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Volume No. 80

TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from July 1, 1955, through September 30, 1955, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama, 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

JOHN PATTERSON,
Attorney General.

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OPINIONS

July 28, 1955

Hon. J. Earl Romine, Sheriff
Lauderdale County
Florence, Alabama

Costs and Fees—Sheriffs—Bailiffs.

1. A sheriff is entitled to $3.00 per day for attendance upon probate and circuit courts.

2. A sheriff is entitled to $2.00 per day for attendance upon county court.

3. Sheriff's fees for attendance upon court are not dependent upon or related to the bailiff's attendance.

Opinion by Assistant Attorney General Bridges.

Dear Mr. Romine:

Your request for an official opinion, bearing date of July 12, 1955, is as follows:

"We are having some misunderstanding in Lauderdale County as to when the Sheriff is entitled to get paid for attending court. I would appreciate you giving me a ruling on that at your earliest convenience. I would like to call your attention to Title 11, Sec. 100 (3) found on page 104 of the Supplement to the 1940 Code. Also to Section 34 of Title 11 (#7287 of 1923 Code). I also think our county governing body is confused over the Sheriffs attendance and the Bailiff fee, which are not connected as I understand it."

The following statutes, or portions thereof, provide for the payment of fees to the sheriff for his attendance at court:

Title 11, Section 34, Code of Alabama 1940 (applicable to civil cases):

"Fees allowed to sheriffs.—Sheriffs are entitled to receive the following fees for the following services:

* * * * * *

"Attendance upon the probate court when a jury is in attendance, or upon the circuit court when a jury is in attendance, each day, to be paid out of the county treasury.....3.00."

Title 11, Section 87, Code of Alabama 1940 (applicable to criminal cases):

"Fees in county court.—In prosecutions before the county court the following fees shall be allowed for the services specified:

* * * * * *

"For each day's attendance by the sheriff, on such court.....2.00."

Title 11, Section 100, Code of Alabama 1940:

"Sheriff's fees and allowance; . . . —Sheriffs are entitled to the following fees and allowances in criminal cases—that is to say:

* * * * * *

"For summoning jury in capital case, or at any special court for the trial of criminal to be paid out of the county treasury.....5.00

"For attendance each day on such court to be paid by the county.....2.00."

Act No. 573, General Acts 1943, page 576:

"Sheriffs of the several counties of the State shall be allowed and paid the same fees for attending non-jury civil courts as are now paid them for attending upon Jury Civil Courts, and the same fees for attending Jury and non-jury Criminal Courts as are now paid them for attending upon Civil Jury terms of the Circuit Court, and such additional fees shall be paid from the same source and in the same manner and way as fees are now paid to such officers for attending upon a Jury term of the Circuit Court engaged in the trial of civil cases."

You are advised that you, as Sheriff of Lauderdale County, are entitled to:

1. $3.00 per day for attendance on the circuit court for each day said court is held, whether a jury is in attendance or not.

2. $3.00 per day for attendance on the probate court, whether a jury is in attendance or not.

3. $2.00 per day for attendance on county court.

Prior to the enactment of Act No. 573, supra, the sheriff was entitled to $3.00 per day for attendance on probate court when there was a jury trial and for attending the civil jury trials for the circuit courts. Section 34, supra. This office has held that Act No. 573, supra, provides that sheriffs shall receive the same fees for attending nonjury civil terms and jury or nonjury criminal terms as they received prior to such act for attending jury civil

terms of the circuit court. Quarterly Report of Attorney General, Vol. 58, page 84.

It is my opinion that Act No. 573, supra, supersedes that portion of Section 100, supra, which applies to attendance at capital and special criminal terms of the circuit court when a jury is in attendance ,and that the sheriff is now entitled to the same compensation for attendance thereon as he receives for attending regular terms of the circuit court.

Section 34, supra, provides that the sheriff shall receive $3.00 per day for attending the jury terms of the probate court. Act No. 573, supra, makes this fee applicable to nonjury sessions of the probate court.

It is obvious from a consideration of Section 87, supra, that the sheriff is entitled to $2.00 per day for attendance at county court. Quarterly Report of Attorney General, Vol. 58, page 74. See also Vol. 58, page 84, supra, wherein it is held that Act No. 573, supra, does not apply to attendance at county court.

The provisions of law which relate to bailiffs are found in Title 13, Sections 186 and 187, Code of Alabama 1940, as amended. These statutes are in no way related to the sheriff's attendance in court and should not be construed so that they apply to said attendance.

Yours very truly,

JOHN PATTERSON,
Attorney General.

August 17, 1955

Hon. L. W. Gentry
State Superintendent of Banks
CAPITOL

Commerce, Department of—Banks and Banking—Electric Membership Corporation.

1. A state bank cannot pledge its assets to secure deposits in said bank except as provided in Title 5, Section 119, Code of Alabama 1940, as amended by Act No. 153, General Acts 1947, page 48.

2. Electric membership corporations organized under the provisions of Title 18, Section 10, Code of Alabama 1940, are neither agencies of the Federal Government nor of the State of Alabama, but are private corporations.

3. A state bank cannot pledge bonds, which are part of its assets,

as security for deposits placed in said bank by an electric membership corporation.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion bearing date of July 1, 1955, is as follows:

"Is a State bank permitted to pledge bonds to secure time deposits of the Baldwin County Electric Membership Corp., a corporation existing under the laws of the State of Alabama?"

It is my opinion that the answer to your question is in the negative.

The majority opinion of the courts of last resort is that a bank has no implied power to pledge its assets as security for private deposits.

In the case of **State Bank of Commerce v. Stone,** 261 N. Y. 175, 184 N. E. 750, the court was asked the following question:

"May a bank, to retain or obtain general deposits of private funds, pledge its assets for the security of such deposits?"

The court answered the question in the negative.

The court, in its opinion, cited many cases upholding this viewpoint, one of them being **State Bank of Ogilive v. Consolidated School Dist. No. 3,** 174 Minn. 286, 219 N. W. 163, 65 A. L. R. 1407, in which it was held that a bank has no power to pledge any of its assets to secure the repayment of general deposits, except as authorized by statute regarding state and municipal funds.

Also, the court, in the **Stone** case, supra, citing the case of **Baltimore & Ohio R. R. Co. v. Smith,** 56 F(2) 799, said:

"Referring to the various acts of Congress requiring security for the deposit of public money, such as the postal savings, moneys deposited by receivers, state moneys, or moneys of any political subdivision of a state or Indian moneys, the court said: 'In none of these acts is any mention whatever made of the power to pledge assets to secure private deposits. If Congress had intended to give such power to national banks, it would have expressly indicated such intention. The fact that it did authorize national banks to pledge their property to secure public deposits, but was silent as to private deposits, clearly indicates that it did not intend to give **that power in the case of private deposits.'** "

The court in the **Stone** case, supra, concluded by saying:

". . . . Reason as well as authority indicates that a bank has no implied power to pledge its assets as security for private deposits. To open the door to such a practice would permit officers and directors to favor their relatives and friends, submitting our entire banking system to justifiable suspicion. . ."

Also, see **Commercial Banking and Trust Company v. Citizens Trust & Guaranty Company,** 153 Ky. 566, 156 S. W. 160; 9 C. J. S., Banks and Banking, Section 15(a), page 40.

In the case of **People ex rel. Nelson v. Wiersema State Bank,** 361 Ill. 75, 197 N. E. 537, the court said:

". . . In consonance with the holdings of a majority of the courts of last resort in this country, we are of the opinion that the general practice of pledging assets by banks to secure deposits is not only unnecessary, but is dangerous to the general welfare and is against public policy."

In an opinion of this office found in Biennial Report of the Attorney General, 1920-1922, page 397, it was said that no state bank has the legal right either to pledge its assets to protect certain depositors or to deposit its assets with a surety company as collateral to protect such surety company in the execution of a bond designed to indemnify certain depositors unless there be express statutory authority therefor.

Title 5, Section 119, Code of Alabama 1940, as amended by Act No. 153, General Acts 1947, page 48, provides as follows:

"Any bank is authorized to pledge acceptable assets as security for the deposits of United States Postal Savings funds; or as security for deposits of County funds; or as security for City, Town, or Village funds."

Hence, as stated in the foregoing opinion of this office, banks can only pledge assets to secure deposits when authorized by the Legislature; and the Legislature has seen fit to allow banks to pledge assets to secure deposits only in those instances as set out in Section 119, supra.

Therefore, in the absence of express statutory authority for state banks to pledge assets to secure deposits, it is my opinion, based on the foregoing authority, that state banks cannot pledge assets to secure deposits, except as provided by Section 119, supra.

Title 18, Section 10, Code of Alabama 1940, provides as follows:

"Any number of natural persons not less than three may, by executing, filing and recording a certificate as hereinafter provided, form a corporation not organized for pecuniary profit for the purpose of promoting and encouraging the fullest possible use of electric energy in the state by

making electric energy available to inhabitants of the state at the lowest cost consistent with sound economy and prudent management of the business of such corporation."

This office has held in opinions found in Quarterly Report of Attorney General, Vol. 6, page 76, and Vol. 11, page 116, that electric membership corporations organized under the provisions of Section 10, supra, are neither agencies of the Federal Government nor of the State of Alabama, but are private corporations.

It is, therefore, my opinion that a state bank in Alabama cannot pledge bonds, which are part of its assets, as security for the time deposits of the Baldwin County Electric Membership Corporation, which is a private corporation.

Yours very truly,

JOHN PATTERSON,
Attorney General.

August 24, 1955

Hon. Bert E. Thomas
Tax Assessor
Mobile County
Mobile, Alabama

Municipalities—Taxation—Tax Assessors—Assessments—Opinions Overruled, Modified and Distinguished.

1. The tax assessor is under no duty to assess municipal ad valorem taxes under Title 37, Section 700, Code of Alabama 1940, where the municipality does not levy said taxes by June 1 of the year in which such taxes become due on October 1.

2. The tax assessor is permitted to assess municipal ad valorem taxes under Title 37, Section 700, Code of Alabama 1940, where the municipality does not lelvy said taxes until after June 1 of the year in which such taxes become due on October 1, and the tax collector may collect such taxes.

3. Opinions reported in Quarterly Reports of Attorney General, Vol. 33, page 26, Vol. 18, page 236, Vol. 17, page 267, and Vol. 12, page 176, modified.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion bearing date of July 21, 1955, is as follows:

"We are enclosing herewith two ordinances dated July 7, 1955, by the town of Bayou La Batre, a municipality located within the boundary of Mobile County. One of these ordinances adopts the optional method of collecting taxes as is provided by Section 698 of Title 37 of the 1940 Code of Alabama amended. The other ordinance purports to levy taxes for the municipality to be collected by the County Tax Collector on October 1, 1955.

"It appears that Bayou La Batre was legally declared a municipality by order of the Probate Court on May 11, 1955 as a result of an election held earlier. On June 18, 1955, an election was held to select officials for the town of Bayou La Batre, and these officials were officially declared elected on June 24, 1955. The first meeting of the officials of the town of Bayou La Batre was held on July 7, 1955 at which time the aforesaid ordinances were adopted.

"Section 700 of Title 37 of the 1940 Code of Alabama provides that when a municipality has elected to adopt the optional method of collecting taxes as is provided by Section 698, Title 37 of the 1940 Code of Alabama as amended, such municipality must by resolution or ordinance during the month of May, levy a tax on the property situated within the boundaries of said municipality, such levy go into force and effect as of the 1st day of October next succeeding such levy. Section 2 of the ordinance of the town of Bayou La Batre dated July 7, 1955, purporting to levy a tax for such municipality, reads as follows:

"**Section 2.** The tax hereby levied shall be due and payable to the Mobile County Tax Collector beginning on October 1, 1955, and shall be delinquent on and after January 1, 1956, except that insofar as the tax hereby levied applies to motor vehicles, then such tax shall be due and payable to the Mobile County License Commissioner.

"Inasmuch as there were no legally constituted authorities of the town of Bayou La Batre during the month of May 1955, and consequently no levy of any tax was made by the town of Bayou La Batre during the month of May 1955, please alvise us if an ordance of said town dated July 7, 1955, would be legally operative so as to permit a legal assessment and a legal collection on such an assessment by the County Tax Collector of Mobile County on the first day of October, 1955."

By virtue of Title 37, Section 700, Code of Alabama 1940, the municipalities of this State, with certain exceptions not here pertinent, are authorized to levy a tax on property situated in such municipalities, based on the value of such property as assessed for state taxation as shown by the books of assessment

for the state and county tax year ending the 30th day of September next succeeding the levy. See Constitution of Alabama 1901, Section 216, and Amendment No. LVI to the Constitution of Alabama 1901. Cf. **City of Montgomery v. Graham, et al.**, 255 Ala. 685, 53 So. 2d 363.

The ad valorem taxes of these municipalities are payable in advance. Said taxes become due and payable on the first day of October of each year at the time state and county taxes for the preceding year are due and payable. **Johnson v. State,** 245 Ala. 499, 17 So. 2d 662, Quarterly Report of Attorney General, Vol. 76, page 58.

Therefore, the town of Bayou La Batre, Alabama, was authorized on July 7, 1955, to adopt the ordinance mentioned in your request levying ad valorem taxes on property situated in said town, based on the value of such property as shown by the books of assessment for the state and county tax year ending on September 30, 1955, and providing that said taxes shall become due and payable on October 1, 1955.

Section 700, supra, provides that the mayor or other officer of a municipality, which has elected to collect its ad valorem taxes in accordance with the provisions of Title 37, Article 2, Code of Alabama 1940, shall certify and deliver to the tax assessor of the county in which such municipality is located a copy of the ordinance levying said ad valorem taxes on or before the first day of June of each year. I am of the opinion that this provision was included in Section 700, supra, by the Legislature solely for the purpose of protecting tax assessors from a last minute rush to complete their books of assessment before the first day of October of each year. See Quarterly Report of Attorney General, Vol. 72, page 27.

Premises considered, I am of the opinion that you are under no duty to assess the taxes here under consideration for the municipal tax year beginning October 1, 1955, because of the protection afforded you by Section 700, supra. However, since the town of Bayou La Batre had the authority on July 7, 1955, to levy such taxes, I am of the opinion that you may assess such taxes for said tax year, if you so desire, and the Tax Collector of Mobile County may collect said taxes beginning October 1, 1955.

The opinions reported in Quarterly Reports of Attorney General, Vol. 33, page 26, Vol. 18, page 236, Vol. 17, page 267, and Vol. 12, page 176, are hereby modified to conform to the opinion expressed herein.

Yours very truly,

JOHN PATTERSON,

Attorney General.

September 1, 1955

Hon. John H. Garrett
President, Board of Revenue
Cherokee County
Centre, Alabama

Cherokee County—Constitutionality—Highways and Highway Department.

1. Act No. 261, General and Local Acts 1955, page 606, violates no provision of the Constitution of Alabama 1901.

2. Cherokee County Board of Revenue and Cherokee County Engineer and Road Supervisor have no authority to withhold from the State of Alabama equipment and money, as contemplated in Act No. 261, supra.

3. Under facts stated, the President of the Board of Revenue of Cherokee County is authorized to draw a draft transferring to the State Highway Department such funds as are contemplated by Act No. 261, supra.

4. Under facts stated, the County Engineer and Road Supervisor of Cherokee County is authorized to deliver the equpiment contemplated under Act No. 261, supra.

Opinion by Assistant Attorney General Straub.

Dear Sir:

Your request for an official opinion bearing date of August 29, 1955, is as follows:

"On August 23, 1955, House Bill No. 808, being a Local Act, relating to Cherokee County, Alabama, was signed and approved by Hon. James E. Folsom, Governor, State of Alabama. This House Bill provides in substance that the State Highway Department of the State of Alabama is charged with the duty of constructing, maintaining and repairing county roads in Cherokee County, Alabama, relieving Cherokee County of certain duties in regard thereto and providing for the transfer by the County and its officials to the State Highway Department of certain funds and of certain machinery and equipment. On August 23, 1955, Mr. George W. Phillips, Chief Engineer, Bureau of Maintenance, Alabama State Highway Department made demand upon Cherokee County to deliver to the State Highway Department the funds and machinery as contemplated in such bill. This demand was made at a meeting of the Board of Revenue of Cherokee County and thereafter, member Hobart Chandler moved the

adoption of the following resolution, viz: 'I make a motion that the Cherokee County Board of Rev. refuse to turn over to the State Highway Department its equipment and moneys until we receive an official copy House Bill No. 808 and our attorneys George Hawkins, Clarence Rhea of Gadsden, Ala. and the Hon. Jack Livingston County Solicitor for Cherokee Co. have had a chance to study the official copy of House Bill No. 808, and refer the Highway Dept. to the above mentioned Attorneys for any question in mind.' The above motion was seconded by member A. P. Lindsay and on vote, member Hobart Chandler, A. P. Lindsay and N. J. Fitzpatrick voted in favor of the adoption of the motion and member R. F. Griffith refused to vote.

"Thereafter, Mr. Richard C. Word, Jr., County Engineer and Road Supervisor of Cherokee County, Alabama, was instructed to refuse to deliver to the State Highway Department any equipment owned by Cherokee County, Alabama.

"In view of the foregoing situation, I shall appreciate an official opinion from your office advising me and the Board of Revenue of Cherokee County, Alabama, as follows:

"1. Whether or not said House Bill No. 808, approved May 23, 1955, violates any provision of the Constitution of Alabama of 1901.

"2. Whether or not the Cherokee County Board of Revenue and/or Mr. Richard C. Word, Jr., Cherokee County Engineer and Road Supervisor, has authority to withhold equipment and money as contemplated in said bill.

"3. Whether or not I, in my official capacity as President of the Board of Revenue, would be authorized to draw a draft transfering funds as contemplated in said bill payable to the State Highway Department in view of the foregoing motion that has been adopted by the majority of the Board of Revenue.

"4. Whether or not Mr. Richard C. Word, Jr., as County Engineer and Road Supervisor can legally deliver the equipment as contemplated in said Local Act in view of the foregoing motion."

I shall answer your questions in the order in which you have presented them.

1. Your attention is called to the case of **Hall, et al v. Underwood,** 258 Ala. 392, 63 So. 2d 683, wherein the Supreme Court of Alabama construed what is known as the Todd Act, Act No. 143, General and Local Acts 1951, page 378. A comparison reveals that the Todd Act, supra, is almost identical to Act No. 261, General and Local Acts 1955, page 606, now under consideration. The

main difference between Act No. 261, supra, and the Todd Act, supra, is that Act No. 261 excepts from its provisions money presently in the Road, Bridge and Public Building Fund of Cherokee County, and funds received by the county under Section 215, Constitution of Alabama 1901. Aside from this and other minor differences the effect of the two Acts is identical.

In **Hall v. Underwood,** supra, a declaratory judgment was sought to determine the constitutionality of the Todd Act, and the Supreme Court of Alabama held that the Act did not contravene the provisions of Sections 104, 105, 45, 95 or 22 of the Constitution of Alabama 1901. In view of the similarity of the two Acts and the inclusiveness of the opinion of the Supreme Court of Alabama in **Hall v. Underwood,** supra, it is my opinion that Act No. 261, supra, does not violate any provision of the Constitution of Alabama 1901. It may also be stated that a review of the Journal of the House of Representatives reveals that the Bill was properly advertised, passed without amendment by both houses, and approved by the Governor.

2. Your attention is called to Section 4 of Act No. 261, supra, which provides in part as follows:

> "Section 4. Upon the effective date of this Act the governing body of Cherokee County and all officials of the county shall transfer and turn over to the State Highway Department, all funds, supplies, equipment, machinery and materials held, owned, leased or controlled by it or them for the construction, maintenance and repair of county roads and bridges. . . ."

In view of the above, it is my opinion that the Cherokee County Board of Revenue, which is charged with the administration of the county finances under Act No. 250, Local Acts 1939, page 138, as amended by Act No. 222, Local Acts 1943, page 121, and Act No. 273, Local Acts 1943, page 162, and the Cherokee County Engineer and Road Supervisor, who is charged with the control of county equipment by Act No. 251, Local Acts 1939, page 143, as amended by Act No. 223, Local Acts 1943, page 123; Act No. 494, Local Acts 1945, page 193, Act No. 154, General and Local Acts 1949, page 179, have no authority to withhold from the State Highway Department any funds, supplies, equipment, machinery or materials for the construction, maintenance and repair of county roads and bridges, with the exception of monies now constituting the Road, Bridge and Public Building Fund of Cherokee County and any amount received by Cherokee County under Section 215 of the Constitution of 1901, as provided in Act No. 261, supra.

3 and 4. You state in your letter of inquiry that in the face of a direct mandate of the Legislature of Alabama that certain funds and equipment belonging to Cherokee County be turned over to the State Highway Department, the county governing body has passed a resolution refusing to transfer such funds or equipment. Section 8 of Act No. 250, as amended, supra, provides in part as follows:

". . . and no funds or monies belonging to the County shall be paid out or warrants drawn thereon except when and as authorized by said Board of Revenue. . ."

However, certainly it cannot be said that a procedural rule can defeat a later expression of the Legislature regarding the transfer of funds. It is, therefore, my opinion that, although the County Board of Revenue has passed a resolution refusing to turn over the funds and machinery in question, you, as President of the County Board of Revenue, and Mr. Word, as County Engineer and Road Supervisor, may legally turn over to the State Highway Department such funds and equipment or machinery as are contemplated by Act No. 261, supra.

Very truly yours,

JOHN PATTERSON,
Attorney General.

September 30, 1955

Hon. Bradley Brown, Director
Department of Revenue
Jefferson County Court House
Birmingham 3, Alabama

Taxation—Licenses—Judges of Probate—Counties—State and State Departments.

1. Where only a state license is required under any of the sections of Article 1, Chapter 20, Title 51, Code of Alabama 1940, or any acts amendatory or supplemental thereto, and where any section expressly provides that no county license is to be collected, then the total amount collected under such section shall be remitted to the state, as such cases do not come within the purview of Act No. 572, General and Local Acts 1955, page 248, and effective October 1, 1955.

2. Under provisions of Act No. 572, General and Local Acts 1955, page 1248, all amounts collected as county licenses under the provisions of Article 1, Chapter 20, Title 51, Code of Alabama 1940, or any acts amendatory or supplemental thereto, are required to be reported and deposited with the amounts collected for state licenses, and distributed on a fifty-fifty basis as provided for in said Act.

3. Where both a state and county license are provided for in the privilege license schedules, Act No. 572, General and Local Acts

1955, page 1248, approved September 12, 1955, requires that all amounts collected for state and county licenses on or after October 1, 1955, be distributed one-half thereof to the state and one-half thereof to the county, regardless of when said licenses may have accrued or have become due.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion, bearing date of September 21, 1955, is as follows:

"HB 43, Act No. 572, approved September 12, 1955, effective October 1, 1955, which in effect amends subsection (b) of Section 831, Title 51, Code of Alabama of 1940, or any act amendatory thereof, poses several questions which I would appreciate an official opinion on prior to October 1st, which is the beginning of our new license year.

"1. We are of the opinion that definitely all of the amount of the licenses levied, less commissions, are to be paid to the state under sections which include the provisions 'provided no license shall be paid to the county,' or 'but none to the county,' such as Section 460—Attorneys, Section 522—Engineers, Section 565—Osteopaths and Chiropractors, and others, but what division are we to make of revenues received under sections such as 609, 485, and transient auctioneers under Section 461, where there is a state license levied, also a county license in each county, i.e., would we be correct under Section 609 in collecting $30.00 for the state and $5.00 for the county and dividing this $17.50 to each, less commissions of course; and where the state license is paid in another county and the $5.00 only paid in this county, are we to divide it equally inasmuch as both licenses, state and county, are levied under this section?

"2. If a license is issued after October 1, 1955, as an escape, is the revenue from this license to be divided equally between the state and county if there be both a state and county license levied under the particular section even though the license became due prior to the effective date of this act?

"Your reply to this will be of tremendous help to us if you can advise us prior to October 1st."

Act No. 572, General and Local Acts 1955, page 1248, which is effective October 1, 1955, provides in pertinent part, as follows:

"Section 1. **Whenever,** by virtue of the provisions of sub-section (b) of Section 831, or the provisions of Article 1 of Chapter 20, Title 51, Code of Alabama (1940), or of any act amendatory thereof or supplemental thereto, **both a state and county license are levied,** the authority charged with the

duty of collecting such licenses shall continue to collect the same, and, of the total amount collected for such state and county licenses, he shall distribute one-half thereof to the state, and one-half thereof to the county, any other provision of law to the contrary notwithstanding." (Emphasis supplied.)

You will note from the parts of said Act which I have just emphasized that it is to apply only, "whenever . . . both a state and county license are levied," under the provisions of Article 1, Chapter 20, Title 51, Code of Alabama 1940, or any act amendatory or supplemental thereto. The act also refers to **Title 51, Section 831, Code of Alabama 1940, which section was last amended by Act No. 700, General and Local Acts 1951, page 1207. This section provides,** among other things, that whenever a license is levied, there shall be collected both a state and county license for each place of business, **except as specifically otherwise provided.** This part of Section 831, as amended, supra, is not affected or changed by Act No. 572, supra.

The rule in such cases is that, where a statute is clear and unambiguous in its terms, it leaves no room for construction, and needs none. **Dixie Coaches, Inc. v. Ramsden,** 238 Ala. 285, 190 So. 92, 94; **Louisville & N.R.R. Co. v. Western Union Telegraph Co.,** 195 Ala. 124, 71 So. 118; **Board of Education of Jefferson County v. State,** 222 Ala. 70, 74, 131 So. 239; **May v. Head,** 210 Ala. 112, 96 So. 869; **White v. City of Decatur,** 25 Ala. App. 274, 144 So. 872 (cert. denied, 225 Ala. 646, 144 So. 873), 86 A.L.R. 914.

Thus, the Act itself appears to clearly provide that **whenever both a state and county license are levied,** then it is to apply. This would expressly eliminate from the operation of the Act all of those sections, such as those levying the attorneys, engineers or osteopaths licenses, among others, which expressly provide that no county license is to be paid.

I can find no instance in any of the license sections under Article 1, Chapter 20, Title 51, supra, where a state license is not at least initially required, so there appears to be no question but that at least one state license would be required in every case under Article 1.

Some few of these sections, as you state, do require only one state license to be purchased, and that in the first or initial county in which business is done, and, thereafter, require that only a specified county license be collected in each additional county in which such business is conducted. A good example of this is that of the auctioneer's license under Title 51, Section 461, Code of Alabama 1940, which you describe in your first question.

Therefore, in all cases where a county license is provided for generally under Section 831, as amended, supra, or specifically in some particular license section (notably Sections 461, 485, 609 of Title 51, among others), Act No. 572, supra, requires that the amounts collected for such county licenses be reported and be deposited with the amounts collected for state licenses and distributed on a fifty-fifty basis as provided for in said Act.

Your first question is then answered in the affirmative.

As to your second question, the date of payment appears to be the material thing to consider. Act No. 572, supra, provides in this respect that it is to become effective on October 1, 1955. On or after that date, the total amount collected from state and county licenses shall be distributed one-half thereof to the state, and one-half thereof to the county. The Act does not limit this to licenses which will accrue or become due after October 1, 1955. It states in effect that all amounts collected for state and county licenses on or after October 1, 1955, shall be distributed on said fifty-fifty basis.

This amendment then would have the effect of superseding that part of Section 831, as amended, supra, relating to the method of distributing the revenue derived from state and county licenses as of October 1, 1955. The old law to this extent and insofar as it conflicts with the provisions of Act No. 572, supra, would no longer exist, or have any field of operation after September 30, 1955. Therefore, all distributions of amounts collected as state and county licenses (no matter when same may have accrued) would have to be made under the new law, Act No. 572, supra. **State ex rel Bates v. Baumhauer,** 239 Ala. 476, 195 So. 869; **Mitchell v. Walden Motor Co.,** 235 Ala. 34, 177 So. 151; **Allgood, etc. v. Sloss-Sheffield Steel & Iron Co.,** 196 Ala. 500, 71 So. 724; **City of Birmingham v. Baranco,** 4 Ala. App. 279, 58 So. 944, 945.

The answer to your second question then is also in the affirmative.

Very truly yours,

JOHN PATTERSON,
Attorney General.

September 30, 1955

Hon. Edward H. Reynolds,
County Solicitor,
Macon County,
Tuskegee, Alabama.

Registers—Costs and Fees—Nonsupport.

1. When the register collects and forwards monies received under an order of the circuit court, in equity, for support, pursuant to the provisions of Act No. 879, General and Local Acts 1951, page 1515 (Title 34, Sections 105-123, 1953 Cumulative Pocket Part, Code of Alabama 1940), as amended by Act No. 823, General and Local Acts 1953, page 1107, he is entitled to one and one-half per cent of the monies received as a fee for receiving, keeping and paying

out or disbursing monies, where the monies received do not exceed $1,000.00 under the provisions of Title 11, Section 27, Code of Alabama 1940, as amended by Act No. 374, General Acts 1947, page 262.

2. The circuit court, in equity, by virtue of subsection (b) of Section 15 of Act No. 879, as amended, supra, may direct the costs and fees incurred in the original cause taxed against the State of Alabama in support cases brought pursuant to the provisions of Act No. 879, as amended, supra, but such fees chargeable against the State of Alabama do not include those fees for receiving, keeping and paying out or disbursing monies paid into the court for support.

Opinion by Assistant Attorney General Baker.

Dear Sir:

Your request for an official opinion bearing date of June 9, 1955, is as follows:

"Under Article 4, Tit. 34, of the Code of Alabama 1940, where Alabama is the responding State and the Alabama Court enters a decree ordering the Respondent to pay a fixed sum monthly and such monthly payments are to continue for an indefinite period of time and are collected from the Respondent and forwarded to the Complainant, by the Register of the Chancery Court, in such event what fees if any can the said Register charge for the receiving and forwarding of such monies? In the event the Register is allowed such fees should the Alabama Court order such to be paid in its decree and further when and how often can the Register submit his bill for the payment of such fees?

"Under the above facts can the Court decree that such fees be paid by the State of Alabama?"

In answer to your first inquiry, the register in chancery is entitled to a fee of one and one-half per cent under Title 11, Section 27, Code of Alabama 1940, as amended by Act No. 374, General Acts 1947, page 262, and he may receive this one and one-half per cent as a charge out of the monies received pursuant to an order of the circuit court, in equity, under the provisions of Act No. 879, General and Local Acts 1951, page 1515 (Title 34, Sections 105-123, 1953 Cumulative Pocket Part, Code of Alabama 1940), as amended by Act No. 823, General and Local Acts 1953, page 1107.

In answer to your second inquiry as to whether or not the costs and fees could be taxed against the State of Alabama in cases being tried in the circuit court under Act No. 879, as amended, supra, I call your attention to subsection (b) of Section 15 of said Act. Based upon this section, it is my opinion that the circuit court hearing the cause brought under Act No. 879, as amended, supra, may direct the costs and fees incurred in the original cause taxed

against the State of Alabama. The costs and fees taxable against the State of Alabama under subsection (b) of Section 15 of Act No. 879, as amended, supra, are those costs and fees which are taxable in equity cases.

Yours very truly,

JOHN PATTERSON,
Attorney General.

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